LAURA E. DUFFY
United States Attorney
JULIA A. CLINE
Special Assistant United States Attorney
California State Bar No. 201624
United States Attorney's Office
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 546-8941
julia.cline@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. Paulino Herrera-Hernandez, Defendant.	Case No. 14-cr-3571-LAB UNITED STATES' MOTIONS FOR: **(1) FINGERPRINT EXEMPLARS;** **(2) RECIPROCAL DISCOVERY;** **(3) AND LEAVE TO FILE FURTHER MOTIONS** **TOGETHER WITH STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES** Date: January 26, 2015 Time: 2 PM

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Laura E. Duffy, United States Attorney, and Julia A. Cline, Special Assistant United States Attorney, and hereby files its Motions for Fingerprint Exemplars, Reciprocal Discovery, and Leave to File Further Motions. These Motions are based upon the files and records of the case, together with the attached statement of facts and memorandum of points and authorities.

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I

STATEMENT OF THE CASE

On or about December 11, 2014, defendant Carlos Aguirre-Perez ("Defendant") waived Indictment and entered a plea of not guilty to a single-count criminal Information, charging him with Removed Alien Found in the United States, in violation of Title 8, United States Code, Sections 1326 (a) and (b).

II

STATEMENT OF FACTS

On or about November 14, 2014, at approximately 2:00 a.m., Defendant was apprehended approximately five miles east of the Otay Mesa, California Port of entry and eight miles north of the United States-Mexico international border. Record checks reveal that Defendant has been previously deported and removed from the United States, and has not received permission to enter or remain in the United States.

III.

ARGUMENT

A. MOTION FOR THE TAKING OF FINGERPRINT EXEMPLARS

Part of the United States' burden of proof in this case is to satisfy the jury that Defendant was an alien, previously removed from the United States, who lacked permission to reenter the United States. To make that showing, the United States may call an expert in fingerprint identification to match Defendant's fingerprints to relevant evidence. The most efficient and conclusive manner of establishing this information is to permit the expert witness himself to take a set of Defendant's fingerprints for comparison.

A defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate a defendant's Fifth Amendment right self-incrimination. United States v. Velarde-Gomez, 269 F.3d 103, 1031 (9th Cir. 2001). The United

States therefore requests that this Court order that Defendant make himself available for fingerprinting by the United States.

B. MOTION FOR RECIPROCAL DISCOVERY

The discovery provided to Defendant, at his request, includes documents and objects which are discoverable under Rule 16(a)(l)(E). Consequently, the United States is entitled to discover from Defendant any books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies or portions of any of these items, that are in Defendant's possession, custody, or control and which Defendant intends to use in Defendant's case in chief. See Fed. R. Crim. P. 16(b)(l)(A).

The United States further requests that it be permitted to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, which are in the possession or control of Defendant, which Defendant intends to introduce as evidence in chief at the trial, or which were prepared by a witness whom Defendant intends to call as a witness. Because the United States will comply with Defendant's requests for delivery of reports of examinations, the United States is entitled to the items listed above under Rule 16(b)(1) of the Federal Rules of Criminal Procedure. The United States also requests a written summary of the names, anticipated testimony, and bases for opinions of experts Defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

The United States also requests that the Court make such order as it deems necessary under Rules 16(d)(1) and (2) to ensure that the United States receives the discovery that it is entitled. Rule 26.2 requires the production of prior statements of all witnesses, except Defendant's. The Rule thus provides for the reciprocal production of Jencks statements. The time frame established by the Rule requires the statement to be provided after the witness has testified, as in the Jencks Act. Therefore, the United States hereby requests that Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the Court. This order should include any form these statements are memorialized in, including, but not limited to, tape recordings, handwritten or typed notes, or reports.

C. LEAVE TO FILE FURTHER MOTIONS

The United States respectfully requests the opportunity to file further motions should new information or legal issues arise.

IV.

CONCLUSION

The United States respectfully requests its Motions for Fingerprint Exemplars, Reciprocal Discovery, and Leave to File Further motions be granted.

DATED: January 21, 2015

Respectfully submitted,
LAURA E. DUFFY
United States Attorney

/s/*Julia A. Cline*
Special Assistant U. S. Attorney

UNITED STATES OF AMERICA,
Plaintiff,
v.
Paulino Herrera-Hernandez,
Defendant

Case No.: 14-cr-3571-LAB
Certificate of Service

IT IS HEREBY CERTIFIED THAT:

I, Julia A. Cline, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893. I am not a party to the above-entitled action. I have caused service of **Government's Motions for Fingerprint Exemplars, Reciprocal Discovery, and Leave to File Further Motions** and this Certificate of Service on the following parties by electronically filing the foregoing with the Clerk of the U.S. District Court for the Southern District of California using its ECF System, which electronically notifies them:

To: Amrutha Jindal, Esq. Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on January 21, 2015

LAURA E. DUFFY
United States Attorney

/s/*Julia A. Cline*
Special Assistant United States Attorney